

Attachment 8

The April 20, 1998 letter was not included as an attachment to the agenda item, since it arrived after the item was completed.



PATRICK K. FAULKNER
COUNTY COUNSEL

ALLEN A. HAID
CHIEF DEPUTY

DOROTHY R. JONES
JOHN F. GOVI
PRINCIPAL DEPUTIES

COUNTY COUNSEL OF MARIN COUNTY
SUITE 303, CIVIC CENTER
SAN RAFAEL, CALIFORNIA 94903

(415) 499-6117
FAX (415) 499-3796
TDD (415) 499-6172

RUTH W. ROSEN
ALEXIS J. McBRIDE
MARLENN G. RIVERS
CHARLES J. MCKEE
DEBORAH A. BIALOSKY
RENEE GIACOMINI BREWER
DAVID L. ZALTSMAN
MICHELE KENO
DEPUTIES
PAULETTE ENGLER
ADMINISTRATIVE ASSISTANT

BY FACSIMILE AND U.S. MAIL
(916) 255-2227

April 20, 1998

Chairman Daniel Pennington
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826

RE: Request for an Appeal
Redwood Landfill, Marin County

Dear Chairman Pennington:

I am writing on behalf of Marin County Environmental Health Services acting as the Local Enforcement Agency ("LEA") for the California Integrated Waste Management Board ("CIWMB") in response to a supplemental letter dated April 10, 1998 submitted by Redwood Landfill, Inc. ("Redwood") in support of its appeal of the LEA's refusal to schedule a hearing panel.

Redwood's letter of April 10, 1998 contains several assertions with which the LEA strenuously disagrees and raises several issues which are not germane to the request for an appeal. This letter is intended to briefly address the main arguments raised in Redwood's letter.

**I. THE LEA HAS NOT INITIATED AN ENFORCEMENT ACTION AND
THUS REDWOOD IS NOT ENTITLED TO A HEARING PANEL**

In a letter to Redwood dated March 10, 1998, the LEA rescinded permission previously granted to Redwood to use sludge-derived alternative daily cover on an interim basis pending Redwood's application for revision of its solid waste facilities permit (SWFP). The letter listed several reasons for the rescission, the foremost being that interim permission was granted with the explicit understanding between the parties that Redwood's application for permit revision was imminent. Despite this understanding, Redwood still had not filed an application for permit revision more than one and a half years later.

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In response to the March 10, 1998, Redwood sent a letter to the LEA dated March 12 1998 demanding a hearing panel. The LEA replied in a letter dated March 27, 1998, explaining that the LEA letter of March 10, 1998 was intended to give Redwood an opportunity to voluntarily comply with the LEA's directive to stop using sludge-derived ADC until that process received formal approval through the permit revision process. The letter informed Redwood that the letter of March 10th was not intended as a formal enforcement action and thus no hearing panel would be scheduled. The LEA also informed Redwood that continued use of sludge-derived ADC would trigger an enforcement action at which time Redwood would have the right to request a hearing panel. Finally, the letter suggested that the parties set up a meeting in an attempt to informally resolve the issues.

The procedures followed by the LEA in this case are much akin to the procedures outlined in Public Resources Code section 45011 subd. (b). Prior to issuing an order containing civil penalties, section 45011 subd.(b) requires the enforcement agency to notify the operator of the solid waste facility of the violation and meet with the operator to determine what actions the operator may voluntarily take to bring the facility into compliance.

In this case, the LEA notified Redwood of the violation in its March 10, 1998 letter and in its subsequent letter of March 27, 1998 suggested a meeting to attempt resolution of the issues. The LEA and Redwood actually met for the first time on these issues on April 13, 1998 and a follow-up meeting has been scheduled for April 24, 1998.

In its letter of April 10, 1998 to CIWMB, Redwood argues that the denial of a hearing panel in this case would raise significant, wide-spread consequences to the regulated community, in effect, denying them the opportunity for administrative review and impinging on their due process rights. The letter states that such a position would leave no options but to resort to litigation.

This argument is deliberately calculated to alarm board members and generate concern that due process rights and traditional notions of fairness would be compromised by the denial of a hearing in this case. When examined closely, however, Redwood's arguments can easily be unraveled.

Redwood's due process rights to administrative review of LEA actions remain intact. The LEA letter rescinding interim permission to use sludge-derived ADC did not impose a sanction or penalty on Redwood. Redwood was put on notice that continued use would result in an enforcement action. Once an enforcement action is initiated, Redwood would have the opportunity to request a hearing panel and an appeal to CIWMB if dissatisfied with the results of the hearing panel. Thus, Redwood's right to a full and comprehensive administrative review is wholly preserved.

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The thinly veiled threat that Redwood would be left with no option but to pursue justice through the courts is wholly unfounded. Just as administrative review is premature at this juncture, so is judicial review. No enforcement action has been taken. Redwood has not been sanctioned or penalized. Consequently, there is nothing for the courts to review.

II. THE LEA HAS NOT FAILED TO ACT AS REQUIRED BY LAW OR REGULATION

Redwood has devoted several pages on its April 10, 1998 letter to CIWMB interpreting Public Resources Code section 44307, explaining how failure of the LEA to act as required by law or regulation is a separate grounds for requesting a hearing panel than the formal enforcement actions.

Firstly, it should be noted that in its March 12, 1998 letter to the LEA, Redwood never asked for a hearing panel on the grounds that the LEA failed to act as required by law or regulation. Redwood only requested a hearing panel on the basis that the LEA letter of March 10, 1998 was intended as an enforcement action. Thus, Redwood has waived its right to request an appeal on this basis.

Secondly, despite devoting many pages to this topic, Redwood declined to identify any specific law or regulation that the LEA failed to enforce. Therefore, there are no grounds for a hearing request or an appeal under section 44307.

III. SUBSTANTIVE ISSUES

Redwood asserts that the LEA has no authority to withdraw interim permission to use sludge-derived ADC unless it can show that Redwood violated one of the conditions established at the time the interim permission was granted. Redwood further argues that approval was granted "until such time as the SWFP is revised" rather than setting specific timelimits. Thus, according to Redwood, "interim permission" is open ended and would never expire even if Redwood never submitted an application for a revised permit absent a violation of one of the conditions in the letter.

The LEA responds that Redwood did violate one of the conditions of the "interim permission," namely the condition that Redwood file an application for permit revision in a timely manner. The LEA letter of September 3, 1996 granting Redwood interim approval to use sludge-derived material clearly indicated the LEA's belief that as of that date Redwood was "currently preparing an application to revise Redwood Landfill's SWFP." Furthermore, on October 22, 1996, Cynthia Barnard, a Senior Environmental Health Specialist with the LEA sent Redwood another letter explicitly

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stating:

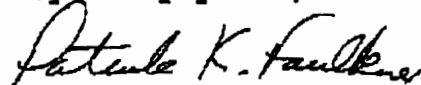
"Successful completion of several alternative daily cover demonstration projects requires that the permit be revised to accommodate the continued use of these products. Current use of these products was approved pending permit revision with the understanding that the process for permit revision was imminent." (Exhibit 1)

These letters stand as written proof that both parties understood an application for permit revision was imminent one and a half years ago. Moreover, Redwood did submit an application for permit modification in December of 1996. After that application was rejected by the LEA as incomplete, Redwood did not resubmit a revised application until March 31, 1998, after the letter rescinding interim permission had already been received.

Since the LEA communicated to Redwood more than one and a half years ago its expectation that an application for permit revision was imminent, any assertion of estoppel by Redwood is belied by the written record. Furthermore, any financial investment in ADC made by Redwood on the basis on such "interim" approval was made purely at its own risk, not based on representations by the LEA. Redwood Landfill is owned by USA Waste. USA Waste recently announced a merger with Waste Management. If that merger is approved, USA Waste would become the largest garbage company in the world. It can reasonably be expected that Redwood is a sophisticated company making business decisions based on its calculations of the risk involved. If Redwood chose to make capital investments based on "interim" approval, it assumed the risk of such investments.

For the reasons outlined above, the LEA believes that Redwood's request for an appeal is premature and the issue will not be ripe for appeal until the LEA takes an enforcement action. Thank you for your consideration of the foregoing matters.

Very truly yours,



Patrick K. Faulkner
COUNTY COUNSEL

cc. Kathryn Tobias
Mark Riesenfeld
Ed Stewart
Jim Moose

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COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY

Environmental Health Services
Civic Center, Room 283
San Rafael, CA 94903
(415) 499-6907
FAX (415) 507-4120

October 22, 1996

Doug Dicmer
Site Manager
Redwood Landfill, Inc.
8950 Redwood Highway
P.O. Box 793
Novato, CA 94948

RE: Solid Waste Facility Permit Revision

Dear Doug:

As you are aware, Redwood Landfill, Inc. received a revised solid waste facility permit in July of 1995. Contained within that permit and referenced in supporting documentation and studies are sludge treatment, disposal, and reuse methods which have been subject to change. Two significant changes have been the abandonment of the alkaline stabilization process, and the use of alternative daily covers.

Successful completion of several alternative daily cover demonstration projects requires that the permit be revised to accommodate the continued use of these products. Current use of these products was approved pending permit revision with the understanding that the process for permit revision was imminent. All other significant changes require permit revision as well.

Please send to this office at your earliest convenience a detailed account in the form of a project description which is both accurate and complete describing all permit changes that have been made or are anticipated to be made. Also, it will be required pursuant to 14 CCR 18211 that you file an application for revision of the permit.

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⑤ TRANSMISSION TO THE FOLDER

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If you have questions or comments regarding this correspondence, I can be reached at (415) 499-6907. Thank you for your cooperation.

Sincerely,

Cynthia P. Barnard

Cynthia P. Barnard

Senior Environmental Health Specialist

cc: Sadie Galos, CIWMB
Ade Fagorala, SF Bay RWQCB
Darham Singh, BAAQMD
Scott Walker, CIWMB

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